

Testimony of Congressman Brian P. Bilbray
House Committee on Homeland Security
Subcommittee on Border, Maritime, and Global Counterterrorism
Hearing on “The Border Security Challenge: Recent Developments and Legislative
Proposals.”
May 22, 2008

Chairwoman Sanchez, Ranking Member Souder, members of the subcommittee, thank you for allowing me to participate in today’s hearing regarding “The Border Security Challenge: Recent Developments and Legislative Proposals.” I am honored to sit at this table and testify with my distinguished colleagues. All the members at this table are truly committed to this issue and I am proud to have worked with each of them on their varying legislation and be a cosponsor of legislation authored by each of them.

As you may know, I grew up in a border community—just a few blocks away from the intersection of the US/Mexico border and the Pacific Ocean. My comments today are based on many years of watching our changing immigration policy from the perspective of: a local kid growing up along the border, the former mayor of Imperial Beach, the former Chairman of the Board of County Supervisors in San Diego County, and as the Chairman of the Immigration Reform Caucus. I also speak today as the son of a legal immigrant. My mother was a war bride, emigrating from Australia following World War II. She followed the legal process, applying for a visa and then waited to receive permission to come to the United States.

Since the beginning of this Congress, the membership of the Immigration Reform Caucus has increased by more than 20 percent to 112 Members. The IRC is a bipartisan organization with more and more Members from both parties joining each month. I believe the growth of our Caucus in the 110th Congress reflects the concern of the American people in regards to border insecurity and the problem of illegal immigration. During a time when our borders are being used as gateways for terrorists, drug cartels and human smuggling – we need to send a loud and clear message that illegal immigration will not be tolerated. Border Security is a key priority and an integral part of our national security.

Legislative Proposals

Representative Reyes’s bill, H.R. 5662, Putting Our Resources Towards Security (PORTS) Act

Representative Reyes’s bill, H.R. 5662, the Putting Our Resources Towards Security (PORTS) Act seeks to improve resources by increasing funding for Customs and Border Protection (CBP) and the General Services Administration (GSA) to upgrade technology and infrastructure and increase staffing at CBP. Whenever there is a discussion about increasing security along our nation’s borders, we tend to hear arguments against various proposals because many fear the slowing of commerce. I strongly feel we can secure our borders and not slow commerce which is vitally important to our economy. We must also remember the high cost of not fully securing our border—both human and economic.

In the San Diego region, we have four ports of entry (San Ysidro, Calexico, Tecate and Otay Mesa), but my testimony will focus primarily on San Ysidro. The San Ysidro port of entry, located between San Diego, California and Tijuana, Baja California, Mexico, is known as the

world's busiest land port of entry (LPOE). This LPOE supports 24 northbound vehicle lanes in the United States and six southbound lanes into Mexico. Each day this land port serves up to 50,000 northbound vehicles and 25,000 northbound pedestrians. In the 2006 U.S. fiscal year, more than 23 million vehicles and 53 million people entered the United States at the San Ysidro port of entry. In addition, CBP officers made more than 1,350 criminal arrests and seized more than 124,000 pounds of narcotics resulting in 499 criminal prosecutions. These dedicated officers also handled 57,000 illegal alien apprehensions.

The Department of Homeland Security is planning a major expansion of the San Ysidro port of entry to accommodate the growing number of travelers. Construction is slated to begin this summer on the \$577 million project which will increase the number of lanes in both directions and realign southbound lanes. The project will include infrastructure and building improvements, as well as state-of-the-art primary and secondary inspection areas. The number of vehicles crossing the border is expected to increase by up to 70 percent by 2030, according to a San Diego Association of Governments (SANDAG) study. San Diego County loses nearly \$1.3 billion in potential revenue each year from people who don't cross the border because of bottlenecks, another SANDAG study found.

Congressman Reyes's bill would provide for 5,000 additional CBP officers at all ports of entry (sea, land and air), allowing for an increase in total officers by approximately 30 percent over five years. This increase would ensure all ports of entry are fully staffed. The legislation would also add 350 additional support personnel and 1,200 agriculture specialists at CBP, which would help ensure officers will not be pulled away from inspection duties to perform specialized or administrative work. In addition, it would authorize \$5 billion over five years for the GSA to address infrastructure deficiencies at our land ports of entry. I am proud to have worked with Representative Reyes and to be a cosponsor of this legislation.

Representative Brown-Waite's bill, H.R. 3531, Accountability in Enforcing Immigration Laws Act

Representative Brown-Waite's bill, H.R. 3531, the Accountability in Enforcing Immigration Laws Act of 2007, seeks to crack down on the growing trend of sanctuary cities providing illegal immigrants with a safe harbor from penalty or arrest. There is no generally accepted official description of what it takes these days to be labeled a "sanctuary city," and no federal agency awards the distinction. Two decades ago, the term "sanctuary city" was embraced by communities that gave shelter to victims of political violence. Many police departments have policies which forbid officers from asking the immigration status of defendants charged with misdemeanors. Many police chiefs say the policy encourages illegal immigrants to report crimes without fear of retribution.

I understand not asking victims their status so crimes are reported and witnesses come forward, but those in criminal custody should be asked their status and have that confirmed by federal law enforcement authorities (ICE). Many cities like New York City and Houston resist being labeled a sanctuary city, but they are either via formal policy (ex. NYC's Executive Order 124) or de facto. I would consider any city that has anything on the books (or unwritten policies) that arbitrarily restricts local law enforcement discretion to get information or share information with federal law enforcement authorities to be a sanctuary jurisdiction/city. For example: Joe D. Public has been convicted of three alcohol-related offenses, but police do not or cannot check his immigration status.

Many cities are facing a lot of public outrage on the sanctuary policy issue. Many crime victims have brought forward lawsuits against cities that have various sanctuary policies. Any city that does not check status and simply release criminal illegal aliens back into the population are putting themselves and taxpayer dollars at risk. After the murders in Newark, NJ, the NJ Attorney General Anne Milgram ordered all local police officers in New Jersey to inquire about the immigration status of suspects charged with serious crimes, and to notify federal immigration authorities if there is reason to believe the suspect is in the country illegally. The requirements, which went into effect immediately, apply to suspects arrested for specific indictable offenses and for driving while intoxicated. If the suspect is unable to prove he or she is legally in the United States, the police officer is required to notify ICE. The policy also specifies that prosecutors and courts be notified. Local officers cannot inquire about the immigration status of crime victims, witnesses to crimes or persons requesting police assistance.

Congresswoman Brown-Waite's bill takes many steps to curb illegal immigration. It clarifies that state law enforcement has the inherent authority to investigate, identify, apprehend, arrest, detain, and transfer to federal authorities any illegal immigrant apprehended in the course of routine duties. Importantly, the bill revokes 25% of non-emergency Homeland Security funding from cities within 6 months of becoming a sanctuary city, and gives the Secretary authority to revoke a total of 50% at his discretion. It would authorize the State Criminal Alien Assistance Program (SCAAP) at \$1 billion per year and require ICE to take illegals into custody or pay state and local governments the per diem rate to detain the alien until he or she is removed. In an effort to assist states with the burden of illegal immigrants, the bill authorizes a bonus program for state and local law enforcement agencies for assistance in enforcing immigration laws under the 287 (g) program. I am proud to have worked with Representative Brown-Waite and to be an original cosponsor of this legislation.

Representative Giffords's bill, H.R. 5552, Border Security Accountability Act

Representative Giffords's bill, H.R. 5552, the Border Security Accountability Act would help ensure proper use of taxpayer dollars and help us identify what Congress needs to do to stop the flow of illegal immigration and secure our borders. Nearly \$32 billion dollars were appropriated for the Department of Homeland Security (DHS) in Fiscal Year 2008. An additional \$1.8 billion were appropriated as emergency supplemental funds specifically for border security.

To ensure that our taxpayer dollars are being used effectively, we must ensure transparency and accountability within DHS. The Border Security Accountability Act would institute a regular 90 day reporting requirement on DHS. Currently, DHS is required under law to issue various reports to various committees. I think this legislation is important as it will be a comprehensive document from which Congress can gain much knowledge to base legislative decisions on. I am proud to have worked with Representative Giffords and to be a co-author of this legislation.

Representative Shuler's bill, HR 4088, Secure America Through Verification and Enforcement (SAVE) Act

Representative Shuler's bill, HR 4088, the Secure America Through Verification and Enforcement (SAVE) Act is the piece of legislation the American people have been begging for. For too long, the federal government has let the American people down on the issues of border security and illegal immigration.

A blind eye has been turned as millions of people have illegally entered the country and gained employment. Our porous borders are also a severe threat to our national security. Partisan bickering in Washington has not solved these problems; it has only made them worse. We believe that the time has now come for Congress to put aside its attempts for partisan gain, and start doing what is right for our nation.

Without question, addressing illegal immigration is a difficult task. In fact, one Democratic Party leader has labeled immigration the new third rail of American politics, an issue we touch at our own peril. However, as elected leaders we should not ignore this critical issue simply because it is politically difficult.

The American people expect action on the issue of illegal immigration. Last year, the Senate wrote and debated comprehensive immigration reform legislation. Primarily, the Senate bill failed because it would have granted amnesty providing a pathway to citizenship for millions of illegal aliens. Additionally, the Senate's bill was negotiated behind closed doors. When the public learned of this backroom deal, the outcry was overwhelming — Americans inundated the phone lines of their representatives and filled newspaper opinion pages. Ultimately, the bill was defeated, and rightfully so.

Since the Senate's bill collapsed, the House has failed to take up any meaningful legislation to address illegal immigration. That is why we joined together to craft the SAVE Act, which provides a three-pronged approach to curb illegal immigration: enhanced border security, employment verification and dramatically increased enforcement of our nation's existing laws.

However, what's not included in this bill — amnesty — has given it widespread appeal. While we are a nation of immigrants, we are also a nation of laws. We should not reward those who come to our country illegally and punish those who abide by the law.

Why could this bill succeed where others have failed? It already has extraordinary bipartisan support. To date, 49 Democrats and 103 Republicans have cosponsored the SAVE Act. It also has the support of a cross-section of organizations like the 9/11 Families for a Secure America, the National Federation of Independent Business, the National Association of Police Organizations, the International Brotherhood of Electrical Workers, agriculture organizations and many others.

Among the SAVE Act's highlights: It will ensure that our borders are secured and our laws are enforced. Our bill calls for 8,000 new border patrol agents over the next four years, and provides incentives to recruit and retain them. The SAVE Act also provides for the acquirement of advanced technologies along the border, including aerial surveillance systems and infrared technology. Additionally, 1,200 new Immigration and Customs Enforcement agents would be hired to strengthen interior enforcement and provide specialized training and support to local law enforcement officers.

This legislation also calls for 13 more federal judges to hear cases against those who are arrested along the border, including drug traffickers and so-called coyotes, who are paid to transport illegal aliens across the border.

Finally, to eliminate the primary cause of illegal immigration — illegal employment — the SAVE Act expands the E-Verify program to provide all employers with the tools they need to

ensure that their employees are here legally. The Citizenship and Immigration Services (CIS) program known as E-Verify, formerly known as Basic Pilot and originally authored by my colleague, Representative Ken Calvert, gives employers the ability to check the eligibility status of potential employees and reduces unlawful employment.

E-Verify is a quick, easy and free Web-based system that cross-references Social Security numbers, and other pertinent information, to ensure that a worker is legally entitled to be employed in the United States. A total of 13 States have passed legislation mandating the use of E-Verify and 14 States have legislation pending. To date, more than 64,000 employers participate, with over 1,000 new employers signing up every week. CIS is currently working to reduce an already low (3%) mismatch rate to increase the program's effectiveness. The SAVE Act gradually phases it in for all employers over four years, allowing businesses time to adapt. Making E-Verify mandatory will protect American workers and law-abiding businesses from the unfair competition created by a massive illegal workforce.

The use of E-Verify also means that individual employers are no longer expected to be document experts. The liability of determining the legal status of an employee is placed on the government, not the business owner. Since employers will be required to check all potential employees, racial profiling will not be an issue. Additionally, in the rare case where the system makes an error the employer is held harmless.

We believe passage and implementation of the SAVE Act will send a clear message to the American people — and to the rest of the world — that we are serious about securing our borders and preventing illegal immigration.

This bill represents the best and perhaps only chance we have at passing immigration reform this year. The leadership of both parties must now put aside political motivations and move this bill forward. We look forward to bringing the SAVE Act before Congress for a full debate.

Recent Developments

Due to the inaction of Congress to secure the border and stop the flow of illegal immigration, many states and local governments have stepped up and are addressing the problem on their own. I have been following with special interest the cases of Oklahoma and Arizona, but will focus my testimony on Arizona with its estimated more than a quarter-million undocumented workers and the businesses that employ them.

Arizona Governor Janet Napolitano in July 2007 signed sweeping legislation against employers of illegal workers, targeting the state's market for illegal labor with what she called "the most aggressive action in the country." I salute Governor Napolitano and Arizona's legislators for taking the bold step to do what is right despite Congress's failure to do the same. The penalty for violators is the suspension of a business license on the first violation and permanent revocation for repeat offenders. The Arizona Chamber of Commerce issued a statement calling it "a crippling blow to Arizona business."

According to Gannett News Service: "...Arizona mandated that all businesses use E-Verify starting January 1, 2008 and fewer problems have been reported than originally feared, said Ann Seiden, spokeswoman for the Arizona Chamber of Commerce, which opposed the measure in the legislature last year. Companies haven't left the state in reaction to E-Verify, she said, and

employers haven't reported major problems with the database. Anecdotally, we haven't heard as much backlash as we originally thought," Seiden said."

Make no mistake about it- the employers of illegals are the source of illegal immigration. You just cannot continue to import massive amounts of under-educated, under-trained people who are desperate for work, employment and services. You just cannot sustain it, so now we have got to wean off of this. It will be hard, but it is something we must do for the sake of our nation. You have got to separate those employers who accidentally hire illegals from those who are purposefully doing it.

In conclusion, I would just like to remind all Members of Congress that in San Diego and Southern California and in many border regions, the impact of illegal immigration is in a word- massive. Localities across the country from Hazelton, Pennsylvania to Escondido, California, in my district, have been attempting to deal with the problems of illegal immigration on their own due to the paralysis of the Congress on this issue. As much as I admire their efforts, securing our border and granting legal access are the responsibilities of the U.S. government. It is long past time for this Congress to act. Effective enforcement of our current laws is vital to our ability to regain control of our country's borders and our neighborhoods across the United States. I urge the Committee to conduct vigorous oversight of the Administration's efforts to enforce our immigration laws and to take under consideration thoughtful enforcement proposals to secure our nation. Thank you again for inviting me to participate in today's hearing. I look forward to your questions.